

Court No. - 7**Case :-** WRIT - B No. - 173 of 2024**Petitioner :-** Dal Singar Singh And Others**Respondent :-** Deputy Director Of Consolidation, Sultanpur And Others**Counsel for Petitioner :-** Rajendra Pratap Singh, Surendra Singh**Counsel for Respondent :-** C.S.C., Mohan Singh**Hon'ble Saurabh Lavania, J.**

At the very outset, learned counsel for the petitioners says that Smt. Urmila be permitted to be impleaded in this petition as respondent No. 5 during the course of the day.

The prayer aforesaid is acceded, as the same has not been opposed.

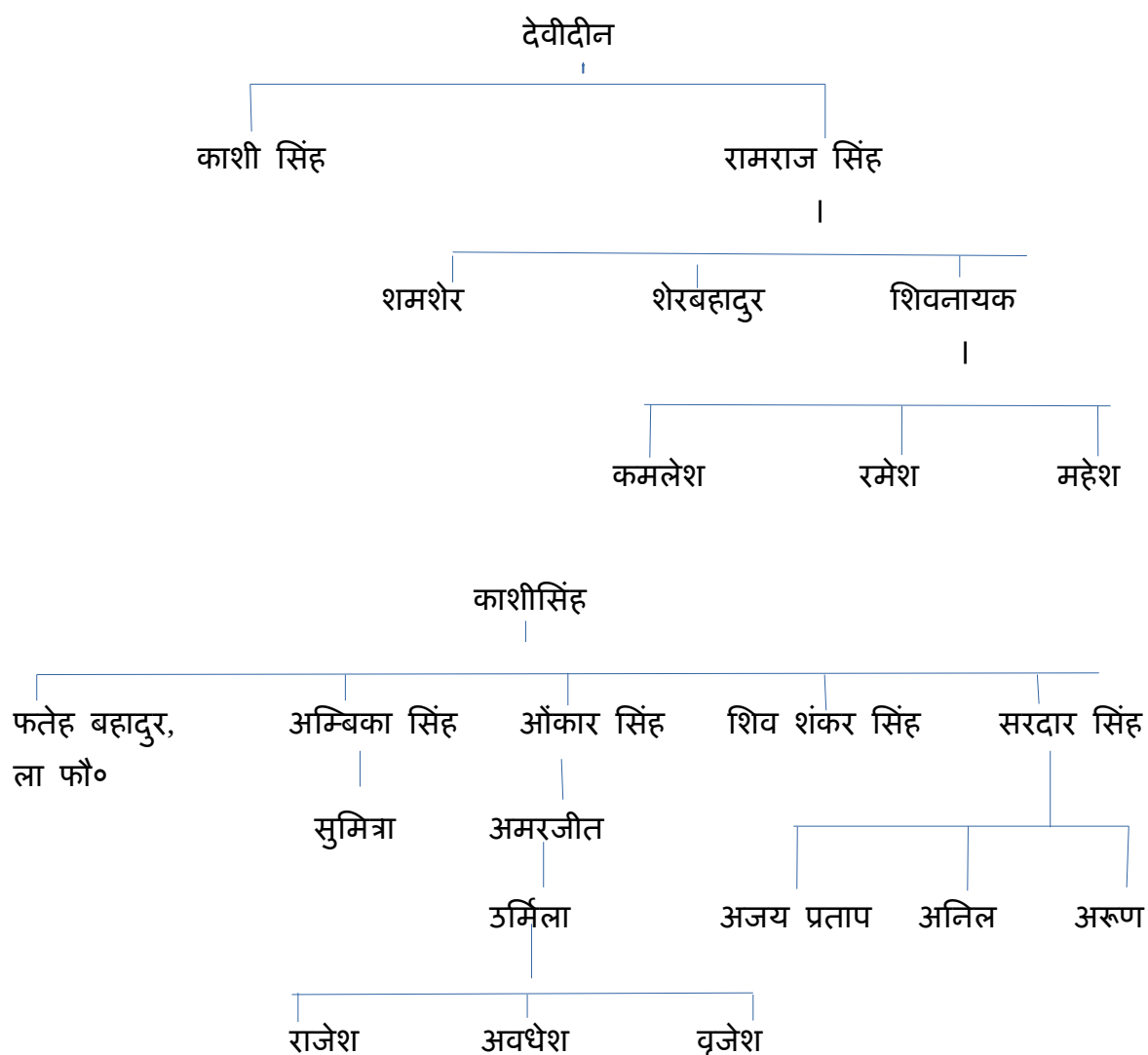
In view of above, learned counsel for the petitioners is permitted to implead the said party in the memo of this petition during the course of the day.

Heard Sri Rajendra Pratap Singh, learned counsel for the petitioners, Sri Badrish Kumar Tripathi, learned State counsel appearing for the respondent Nos. 1 & 2 and Sri Mohan Singh, Advocate, who has received notice for the respondent No. 3/Gaon Sabha concerned.

By means of this petition, the petitioners have assailed the order dated 19.12.2019 passed by respondent No. 2/Settlement Officer of Consolidation, Sultanpur (in short "SOC") in Appeal No. 2018540468001708 (Urmila Singh vs. Dal Singar Singh and others) instituted under Section 11(1) of U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"). The petitioners have also assailed the order dated 18.12.2023 passed by the respondent No. 1/Deputy Director of Consolidation, Sultanpur (in short "DDC") in Revision No. 670/2023 (Dal Singar Singh and others vs. Urmila Singh) instituted under Section 48(1) of the Act of 1953.

Vide impugned order dated 19.12.2019, the respondent No. 2 condoned the delay of about 36 years in filing the appeal and fixed the appeal for disposal on merits. The relevant portion of the order dated 19.12.2019 on reproduction reads as under:-

"पत्रावली का अवलोकन किया गया। स०च०अ० के आदेश 16.02.79 के विरुद्ध अपील अत्यधिक काल बाधित रूप से 27.11.2014 को प्रस्तुत है। अपील के पैरा 2 में कहा गया है कि स०च०अ० ने बिना अंकित खातेदार को सूचित किये ही फतेबहादुर आदि को सहखातेदार बना दिया। जब कि विवादित आराजी सुमित्रा को पट्टे से प्राप्त हुई थी। चूँकि आराजी चकबन्दी पृथक थी इसलिए इन्द्राज की जानकारी नहीं हो पायी। कागजात का मुआइना कराने पर उक्त इन्द्राज की जानकारी हुई। प्रतिवादी के विद्वान अधिवक्ता ने जवाब प्रस्तुत करके कहा है कि खानदान का कुर्सीनामा इस प्रकार है—



प्रतिवादी के अनुसार सुमित्रा को कोई सन्तान नहीं थी। अतएव पूरे परिवार की सहमति से सभी लोगों का नाम अंकित करा दिया गया। च०अ० के पहले भी सभी लोगों का कब्जा था उर्मिला को अपील करने का कोई अधिकार नहीं है। इस आराजी में काशी व रामराज के खानदान के लोग सहखातेदार नहीं हो सकते हैं। चूँकि उर्मिला देवी के पक्ष में सुमित्रा देवी ने पंजीकृत वसीयतनामा लिखा है तथा वह सुमित्रा देवी की वारिस है अतएव सुमित्रा देवी के आराजी के सम्बन्ध में उनके द्वारा की गयी अपील पोषणीय है। समझौता विधि के अनुसार नहीं है। जैसा कि ऊपर के विवेचन से स्पष्ट है। अतएव दफा 5 मियाद का लाभ दिये जाने में भी कोई बाधा नहीं है। इससे उभयपक्षों को अवर न्यायालय में परीक्षण का अवसर प्राप्त हो जायेगा। सारवान न्याय को अग्रसरित करने के लिए 1987 आर०डी० पेज 416 के अनुसार दफा 5 मियाद का लाभ देने में कोई विधिक बाधा नहीं है। इसमें ग्राम सभा के हित का भी परीक्षण हो जायेगा कि विवादित आराजी दीगर बंजर से किस पट्टे के जरिये सुमित्रा देवी के नाम आयी। अतएव ग्रामसभा की व्यापक हित में भी दफा 5 मियाद का लाभ दिया जाना उचित होगा।

आदेश

उपरोक्त विवेचन के आधार पर अपील को पोषणीय मानते हुए दफा 5 मियाद का लाभ प्रदान किया जाता है। पत्रावली गुण-दोष पर बहस हेतु दिनांक 06.01.2020 को पेश हो।"

Vide impugned order dated 18.12.2023, the respondent No. 1 affirmed the order dated 19.12.2019 passed by the respondent No. 1. The relevant portion of the order dated 18.12.2023 on reproduction reads as under:-

"पत्रावली पर उपलब्ध खतौनी 1383 लगायत 1385 फ० के अवलोकन से स्पष्ट है कि खाता संख्या-45 में मु० सुमित्रा विधवा अम्बिका ग्रामवासी का नाम दर्ज है तथा इसी खतौनी पर सहायक चकबन्दी अधिकारी के आदेश वाद संख्या-441 तारीख फैसला-16-2-1979 की अमलदरामद अंकित है। इस खतौनी के अनुसार खातेदार की प्रविष्टी सन् 1371 फ० की है। पत्रावली पर पंजीकृत वसीयतनामा तहरीर दिनांक-24-1-2002 द्वारा सुमित्रा देवी बेवा अम्बिका बहक उर्मिला सिंह पत्नी अमरजीत सिंह छायाप्रति उपलब्ध है।

इन समस्त अभिलेखों के अवलोकन से यह स्पष्ट है कि उर्मिला सिंह पत्नी अमरजीत सिंह हितबद्ध पक्षकार है और उनके द्वारा प्रस्तुत अपील में विलम्ब क्षमा करके व अपील को पोषणीय मानकर अवर न्यायालय ने कोई गलती नहीं की है।

निगरानीकर्तागण को अवर न्यायालय में अपना पक्ष रखने का अवसर प्राप्त है। निगरानी अवर न्यायालय के अन्तरिम आदेश के विरुद्ध प्रस्तुत की गयी है। समग्र रूप से निगरानी निरस्त किये जाने योग्य है।

आदेश

उपरोक्त विवेचना के आधार पर प्रस्तुत निगरानी निरस्त की जाती है। अपील पत्रावली अपीलीय न्यायालय को वापस की जाये। पक्षकार अपीलीय न्यायालय में दिनांक- 4-1-2024 को उपस्थित हो। बाद आवश्यक कार्यवाही पत्रावली राजस्व अभिलेखागार में संचित की जाये।

(आलोक कुमार सिंह)
उप संचालक चकबन्दी,
सुल्तानपुर।

आज यह आदेश मेरे द्वारा सदिनांक मयहस्ताक्षर खुले न्यायालय में सुनाया गया।

उप संचालक चकबन्दी,
सुल्तानपुर।"

Impeaching the impugned orders dated 19.12.2019 and 18.12.2023, learned counsel for the petitioners submitted that in condoning the delay of about 36 years, the respondent No. 2 erred in law and fact both. Elaborating, he submitted that the delay of about 36 years was not properly explained by the respondent No. 5/Smt. Urmila w/o Amarjeet Singh s/o Onkar Singh. It is for the reason that Amarjeet Singh, husband of Smt. Urmila (respondent No. 5), was the beneficiary of the order dated 16.02.1979, in relation to which, the appeal in issue was filed alongwith an application seeking condonation of delay and from this fact, it can be deduced that respondent No. 5/Smt. Urmila was aware about the order dated 16.02.1979.

He also submitted that a perusal of affidavit filed in support of the application for condonation of delay of respondent No. 5/Smt. Urmila indicates that she was not aware about the order dated 16.02.1979 and she came to know about the said order in the month of November, 2014, as such, the explanation given is completely vague.

He further submitted that to the application for condonation of delay, an objection was filed, wherein, it has been specifically indicated that the property in issue is an ancestral property and accordingly taking note of the same, the order dated 16.02.1979 was passed by Assistant Consolidation Officer (ACO) concerned based upon the compromise and this aspect has not been taken note of by the respondent No. 2 while passing the impugned order dated 19.12.2019.

He also submitted that in fact the respondent No. 5 was/is not an aggrieved party, as such, the appeal itself was not maintainable. In support of his submissions, petitioners' counsel has placed reliance on the judgment passed by this Court in the case of ***Radhey Shyam vs. Kamla Shanker and others*** reported in **[2003 (94) RD 227]**. Prayer is to interfere in the matter.

Per contra, learned State counsel says this petition is not liable to be entertained as an order condoning the delay and the order affirming the order condoning the delay have been challenged in it. He further submitted that the order condoning the delay is a discretionary order and the higher Courts should not interfere in the same if delay has been condoned taking note of peculiar facts of the case.

He further submitted that in some facts and circumstances of the case, even one day delay is fatal and in some facts and circumstances of the case, the Hon'ble Apex Court has condoned the delay of 42 years. In this regard, he placed reliance on the judgment passed by Hon'ble Apex Court in the case of ***Vidya Devi vs. State of Himachal Pradesh and others.***, (2020) 2 SCC 569.

He also stated that in the instant case, prima facie, it appears that a recorded tenure holder namely Sumitra Devi w/o Ambika Singh was not heard by ACO while passing the order dated 16.02.1979 and Sumitra Devi executed a 'Will' dated 24.01.2002 in favour of Smt. Urmila, who preferred the appeal on coming to know about the order dated 16.02.1979 and in the application for condonation of delay,

Smt. Urmila has specifically stated that even her husband did not point out regarding the order dated 16.02.1979 being the beneficiary of the said order and taking note of these aspects of the case, the SOC condoned the delay and fixed the appeal for disposal on merits vide order impugned dated 19.12.2019.

In addition to above, learned State counsel also stated that being the propounder of 'Will', Smt. Urmila is an aggrieved party, as such, the appeal filed by her is maintainable.

Considered the aforesaid and perused the record.

The law on the issue of dealing with the applications for condonation of delay is well settled. This Court as also Hon'ble Apex Court in various judgments have held that an opportunity of hearing should be given and the hearing should not be shut down and in the said judgments, it is also settled that liberal, pragmatic, justice oriented and non pedantic approach should be taken by the Courts concerned while dealing with the applications for condonation of delay so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned. The Courts concerned while dealing with such applications should also consider the fact that whether the delay has sufficiently been explained or not. The manner of exercising discretion in matters relating to condonation of delay is fairly well settled and it has been consistently held that while exercising discretion in such matters, the words "sufficient cause" under Section 5 of The Limitation Act, 1963, should be construed in a liberal manner and in the absence of anything showing malafide or deliberate delay as dilatory tactics, the Court should normally condone the delay. It is also settled principle of law that the discretion if exercised by the Courts concerned then the Appellate Courts should not interfere in the discretion exercised by the Courts concerned, if the discretion so exercised has been exercised judicially and not arbitrarily.

The Hon'ble Apex Court in the case of ***Ramji Dass and others v. Mohan Singh, 1978 ARC 496*** has held that as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. In that case the appeal was filed against an ex-parte decree after eight years and the District Court as well

as the High Court had rejected the matter on the ground of delay. However, setting aside the order of the High Court, Hon'ble Apex Court observed as under:-

"... we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interest of Justice which always informs the power under S. 115 C.P.C. ..."

The manner of exercising discretion by Courts in matters relating to condonation of delay was subject matter of consideration in the case of *N. Balakrishnan Vs. M. Krishnamurthy; (1998) 7 SCC 123*, wherein Hon'ble Apex Court observed as under:-

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to

dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366."

In the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nefar Academy and others reported in (2013) 12 SCC 649*, the issue before the Apex Court was that whether the High Court rightly condoned the delay of 2449 days in challenging the interim order dated 25.02.2004, which was duly communicated to the authorities and even for compliance of the same, the District Inspector of Schools, Howrah on 24.01.2006, directed the school authorities to comply with the directions issued vide order dated 25.02.2004. The Apex Court after considering the earlier judgments allowed the appeal and set aside the order of the High Court, condoning the delay. In the case of *Esha Bhattacharjee (supra)*, the Apex Court in para 21 of the judgment culled out the principles on the issue of condoning the delay, which are as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are

required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

In the case of *Brijesh Kumar and others v. State of Haryana and others reported in (2014) 11 SCC 351*, the Hon'ble Apex Court observed as under:-

"6. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained everyday by the courts. The law of limitation is enshrined in the legal maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. The Privy Council in *General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim* [(1939-40) 67 IA 416 : (1941) 53 LW 212 : AIR 1941 PC 6] , relied upon the writings of Mr Mitra in *Tagore Law Lectures, 1932* wherein it has been said that:

A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.

8. In *P.K. Ramachandran v. State of Kerala* [(1997) 7 SCC 556 : AIR 1998 SC 2276] , the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:

"6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds."

9. While considering a similar issue, this Court in *Esha Bhattacharjee v. Raghunathpur Nafar Academy* [(2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450] laid down various principles inter alia: (SCC pp. 658-59, paras 21-22)

"21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

The Hon'ble Apex Court in the case of *Bhivchandra Shankar More v. Balu Gangaram More* reported in (2019) 6 SCC 387, observed as under:-

"15. It is a fairly well-settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in *B. Madhuri* [B.

Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under:

“6. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.”

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in *N. Balakrishnan v. M. Krishnamurthy* [*N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123], this Court held as under:-

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.....”

The Hon'ble Apex Court in the case of *Ajay Dabra Versus Pyare Lal and others* reported in **2023 SCC OnLine SC 92**, observed as under:-

"12. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of *Mahant Bikram Dass Chela v. Financial Commissioner, Revenue, Punjab, Chandigarh* (1977) 4 SCC 69 has held:

"21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the

appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned."

13. This Court in the case of *Basawaraj v. Special Land Acquisition Officer* (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

Needless to say that this petition has been filed challenging the order dated 19.12.2019, whereby, the SOC exercised its discretionary jurisdiction and condoned the delay in filing the objection so as to advance substantial justice and the order dated 18.12.2023, whereby the DDC has affirmed the order dated 19.12.2019, as such, the scope of interference by this Court is limited.

It is only where, therefore, there is complete non-application of mind in condoning delay which is inexorable, or where no reasons for condonation of delay are forthcoming in the order passed by the court below, this Court would ordinarily interfere.

On the scope of interference with discretionary orders even in appeal, the Hon'ble Supreme Court holds thus, in *Wander v. Antox India Pvt. Ltd.; 1990 Supp SCC 727*:

"13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own

discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721).

"... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

Interfering with an order of condoning the delay, the Hon'ble Supreme Court in *Mohammad Shafeeq v. Mirza Mohammad Husain; (2002) 9 SCC 460*; observed as under:-

"3. In our opinion, the High Court has taken too technical a view of the error committed by the appellant in pursuing the remedy available to him under the law. The appellant had been prosecuting his remedy diligently and there is nothing to doubt his bona fides. These aspects were taken into consideration by the learned Additional District Judge while condoning the delay in filing the revision. In our opinion, the High Court ought not to have interfered with the order of the Additional District Judge, condoning the delay in filing the revision, being an order passed in exercise of discretion vested in the learned Additional District Judge and for that reason, was not open to interference by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution."

In view of settled principles, this Court considered the facts of the case particularly the reasons indicated in the impugned orders dated 19.12.2019 and

18.12.2023 and upon due consideration of the same, this Court finds that no interference is required in the impugned orders. It is for the following reasons:-

(i) The 'Will' dated 24.01.2002 executed by (i) Sumitra Devi w/o Ambika Singh was the recorded tenure holder, as appears from the copy of Khatauni annexed with this petition at page 28-29.

(ii) A perusal of order dated 16.02.1979 indicates that the recorded tenure holder namely Sumitra Devi w/o Ambika Singh was not heard.

(iii) The registered 'Will' dated 24.01.2002, which is in favour of respondent No. 5/Smt. Urmila and who preferred the appeal alongwith an application seeking condonation of delay, was executed by Sumitra Devi, who was the recorded tenure holder and was not heard while passing the order dated 16.02.1979.

(iv) Both the authorities under the Act of 1953 have also observed that if the appeal is heard on merits then the interest of Gaon Sabha can also be taken note of, as is required in view of Section 11C of the Act of 1953. This observation appears to be for the reason that Sumitra Devi died issueless.

(v) The respondent No 5/Smt. Urmila, who, prima facie, is having the rights over the land in issue in terms of 'Will' dated 24.01.2002 executed by Sumitra Devi, appears to be a rustic lady and she would be deprived of her rights over the property/land in issue, which have been taken away without providing an opportunity of hearing to Sumitra Devi, if impugned orders are interfered by this Court.

(vi) Vide order dated 16.02.1979, rights were provided to the persons who were not recorded tenure holders of the land in issue that too without an opportunity of hearing to the recorded tenure holder namely Sumitra Devi, who executed the 'Will' dated 24.01.2002 in favour of respondent No. 5/Smt. Urmila.

(vii) It appears that Amarjeet Singh (husband of respondent No. 5/Smt. Urmila) being the beneficiary of the order dated 16.02.1979, did not apprise the respondent No. 5/Smt. Urmila about the order dated 16.02.1979.

For the reasons aforesaid, this petition fails. It is accordingly *dismissed*.

Order Date :- 16.2.2024/Arun/-